

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DURAN IRVIN,)
Plaintiff,)
)
v.) C.A. No. 04-10295-WGY
)
ANDREA CABRAL, et al.)
Defendants.)

MEMORANDUM AND ORDER

For the reasons stated below, if plaintiff wishes to proceed with this action, he shall file an Application to Proceed Without Prepayment of Fees within forty-two (42) days from the date of this Order. Plaintiff is advised that if he fails to timely file a new Application to Proceed Without Prepayment of Fees, this action will be dismissed without prejudice.

DISCUSSION

On January 20, 2004, plaintiff Duran Irvin, now incarcerated at the Suffolk County House of Correction, submitted for filing a pro se complaint challenging the conditions in the protective custody unit at the Suffolk County House of Correction. Since that time, the Court has issued several orders denying without prejudice plaintiff's Applications to Proceed Without Prepayment of Fees. See Docket Nos. 5, 8, and 11.

Because (1) there was a discrepancy in his pleadings as to the amount of funds available to plaintiff and (2) plaintiff filed a letter alleging he allegedly needed a court

order to receive a copy of his prison account statement, plaintiff's most recent Application was denied without prejudice. See 4/9/04 Order, Docket No. 11. At that time, plaintiff was directed to file a new Application to Proceed Without Prepayment of Fees and the clerk sent a copy of the Order to the Suffolk County authorities requesting a copy of plaintiff's account information. Id.

The Court's records indicate that plaintiff has not filed a new Application to Proceed Without Prepayment of Fees. See Docket. However, the Suffolk County House of Correction has filed a "Transaction Detail" for plaintiff's prison account. See Docket No. 12.

The fact that plaintiff has not filed a new Application to Proceed Without Prepayment of Fees may suggest that he may have lost interest in pursuing the claims asserted in the complaint. If plaintiff wishes to proceed with this action and files a new Application to Proceed Without Prepayment of Fees, the Court will assess plaintiff an initial, partial filing fee. See 28 U.S.C. § 1915 (a)(1), (a)(2).¹

¹Because plaintiff currently is incarcerated, he is informed that the submission of an application to proceed without prepayment of fees does not relieve him from his obligation to pay the full amount of the filing fee; it simply allows him to proceed without pre-payment of the entire filing fee up-front. 28 U.S.C. § 1915(b)(1), (2). The Court will direct the appropriate prison official to withhold from

ORDER

Accordingly, if plaintiff wishes to proceed with this action, he is directed to either pay the \$150.00 filing fee or submit a new application to proceed without prepayment of fees within forty-two (42) days of the date of this Memorandum and Order, or this action shall be dismissed without prejudice.

The Clerk shall send plaintiff an Application to Proceed Without Prepayment of Fees and Affidavit with this Order.

SO ORDERED.

Dated at Boston, Massachusetts, this 24th day of August, 2004.

s/ William G. Young
WILLIAM G. YOUNG
CHIEF JUDGE
UNITED STATES DISTRICT COURT

plaintiff's prison account and pay to the Court an initial payment towards the \$150.00 filing fee. The appropriate prison official will also be directed to collect monthly payments from plaintiff's prison account on a continuing basis until such time as the \$150.00 statutory filing fee is paid in full. Id.